KI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(2W)

Cr.A-No.457/2006

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 457/2006

APPELLANT — Shikari @ Ram Prasad, aged about 28 years, Son of Gambhir Yadav, R/o. Village- Baharasi, Mahauradol, P.S. Janakpur Distt. Korea (C.G.)

Versus

RESPONDENT — State of Chhattisgarh, through Police Station, Janakpur, Distt. Korea (CG).

SB: HON'BLE SHRI DHIRENDRA MISHRA, J.

Shri Awadh Tripathi, Advocate for the appellants.
Shri Satish Gupta, Dy. Govt. Advocate, for the respondent /State.

JUDGMENT
(1-6-2007)

Dhirendra Mishra, J.

The appellant has preferred this appeal against the judgment of conviction and order of sentence dated 24-4-2006 passed by learned Addl. Sessions Judge, Manendragarh, Distt. Korea, in Sessions Trial No. 376/2005 whereby learned Additional Sessions Judge has convicted the appellant under Sections 323 and 376(1) of I.P.C. and sentenced to undergo R.I. for 1 year and R.I. for 10 years and to pay a fine of Rs. 1000/- and in default of payment of fine, to further undergo R.I. for 6 months respectively.

2. Case of the prosecution, in brief, is that the prosecutrix, a 22 years old married woman lodged a report in Police Station Janakpur, Distt. Korea on 23-8-2005 at about 13.35 hrs. mentioning therein that day before yesterday i.e. on 21-8-

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

2005, her husband had gone for fishing since morning. Her mother-in-law and father-in-law were present in the home. Her son Rahul aged 5 years had gone to play. She went in search of Rahul towards the village. Children were playing in the courtyard of the accused and the accused was sitting before his door. She asked the accused about her son, to which initially he replied in negative, however immediately thereafter he said that he is inside his house. When she was peeping through the door and was calling her son, her son reached there and in between around 1.30 afternoon, accused caught hold of her and dragged her inside his house and bolted the door with an intention to rob her honour. He fell her on the ground. She tried to save her and shouted and grappled with him whereupon he threw her on the ground and forcibly raped her. During the incident of rape, her mother-in-law knocked the door whereupon the accused left her and ran away after opening the door. She narrated the incident to Chaurasiya Bai. She had sustained injuries over her jaw and both wrists and blood was oozing. Out of shame, she proceeded towards forest in the evening to commit suicide. Yesterday in the evening, her husband and Jeth Shivnath brought her back from the forest. After registering the offence vide Ex. P-1 under Sections 323 and 376 of I.P.C., investigation was commenced. Underwear of the prosecutrix was taken into possession vide Ex. P-2, spot map Ex. P-3 was prepared. The prosecutrix was sent for medical examination to Community Health Centre, Janakpur vide Ex. P-12 where Dr. N. Yadav Rohan (P.W. 9) examined her and gave report Ex. P-12-A. The accused Ram Prasad was also sent for medical examination to CHC, Janakpur vide Ex. P-6. The underwear of the accused was taken into possession vide Ex. P-9. Slides of vagina of the prosecutrix were taken into possession vide Ex. P-10. After completing investigation, charge sheet was filed in the Court of

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आदेश पत्रक (पूर्वानुबद्ध)

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Judicial Magistrate First Class, Manendragarh who in turn committed the case to the Court of Sessions Judge, Surguja, from where learned Additional Sessions Judge received the case on transfer for trial. Charges under Sections 376 and 323 of I.P.C. were framed against the appellant.

3. The prosecution in order to establish the charges against the appellant examined 9 witnesses, thereafter the statement of accused was recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. However, learned trial Court after hearing the counsel for respective parties, convicted and sentenced the appellant as mentioned above.

4. Learned counsel for the appellant submits that the prosecutrix is a grown up lady. The incident is alleged to have occurred on 21st of August, 2005 at about 1.30 P.M. however the report of the incident was lodged after more than 48 hrs. on 23-8-2005 at about 1.30 hrs and explanation of delay in lodging the report appears to be improbable and unbelievable. He further submits that from the evidence available on record, it is evident that 1½ year prior to the date of incident, Jeth of the prosecutrix was prosecuted for raping the sister of the accused, and therefore, the family members of the prosecutrix have falsely implicated the appellant through the prosecutrix. He further argues that so far as injuries present over the person of the prosecutrix is concerned, the doctor who has examined the prosecutrix on 24-8-2005 at 1.00 P.M. has given categorical opinion that the duration of the injuries may be between 24 to 48 hrs. Thus from the statement of the doctor, it is clear that the injuries present over the person of the prosecutrix were inflicted after the incident possibly on 22nd or 23rd of August

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and this belies the assertion of the prosecutrix that she sustained those injuries when the offence was being committed. He further submits that from the statement of the prosecutrix herself it is evident that only 2-3 minutes after she entered in the house of the appellant, her mother-in-law started knocking the door and thereafter the appellant left her and ran away after opening the door. Therefore, it was not possible that act of rape could be completed within such a short period. Reliance is placed on ***2003(II) MPWN Note No. 55 (Ashok Kumar –v- State of Haryana)***.

5. On the other hand, learned counsel for the State supports the impugned judgment.

6. I have heard the learned counsel for the parties. I have perused the record of the trial Court as well as the impugned judgment.

7. The prosecutrix has been examined as P.W. 1, who in her examination-in-chief has reiterated her version of the F.I.R. She further stated that she was sad on account of the incident of rape, therefore, she went towards forest to commit suicide in the evening at about 6-7 P.M. till then her mother-in-law had stopped her in the home. She spent the night in the forest. Next day in the morning, her husband and Jeth came in her search and found her. They took her to home. She narrated the incident to her husband in the forest itself and thereafter, she along with her husband and Jeth went to lodge the report. After lodging the report, she was sent for medical examination to Community Health Centre, Manendragarh. She has denied her version of F.I.R. Ex. P-1 where it is mentioned that she returned from the forest with husband and Jeth in the evening. She has admitted

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

that she was not willing to lodge the report and she has also denied the suggestion that because of this, her husband had beaten her. In para 13 of deposition, she has admitted that only 2 – 3 minutes after closing the door by the accused, her mother-in-law reached there and started thumping the door, upon which, the accused immediately opened the door and ran away.

8. P.W. 2 Chaurasiya Bai, mother-in-law of the prosecutrix, has stated that the prosecutrix had gone to search Rahul while she was in the home. On hearing the voice of her daughter-in-law, she went to the house of the accused where Rahul told that the mother is inside. She heard the cries of her daughter-in-law. She asked to open the door whereupon the door was opened and accused fled from there whereas the daughter-in-law was inside the room and was weeping. She narrated that the accused has raped her. She had sustained injuries on her chin and wrists, blood was oozing from the injuries. At 6 PM, her daughter-in-law proceeded towards forest for committing suicide. In the evening her son Ramnath came back. She told him about the incident and also told that the daughter-in-law has gone towards forest. He went in her search but he could not trace her. Next day, they brought her back from Ramgarh forest around 11 hrs. In cross-examination, she has admitted that her son had gone for fishing at a distance of half a kilometer, however, she did not go to inform him about the incident because she apprehended that he would beat her daughter-in-law. However she has denied the suggestion that after bringing back the prosecutrix her son had beaten her. She has further admitted that when she entered inside the room, she found that the prosecutrix was on petticoat and sari. In para 7, she has stated that

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her daughter-in-law did not say anything about the incident to her and she stated this to the police.

9. P.W. 3 Ramnath, husband of the prosecutrix and P.W. 4 Shivnath, Jeth of the prosecutrix, both have stated that they went in search of the prosecutrix inside the forest on the date of incident. On the next day also, they could not locate her and on 3rd day they could trace her in Ramgarh forest. He has also stated that when he returned on the date of incident, he found that his mother was weeping. She informed that his wife Sonu has gone somewhere and only on the third day, when they found Sonu under a tree, on being asked, she told about the incident and she also told that out of shame, she wanted to die. Statement of P.W. 4 Shivnath is also on the same line. He has admitted in cross-examination that he was prosecuted for offence of raping a lady who was sister in relation of the accused, however the incident is of 1 ½ years back and he has been acquitted of the charge. He has denied the suggestion that because of this, after deliberation the report was lodged against the appellant. He has admitted in para 5 of the cross-examination that his brother Ramnath had reprimanded his wife in the home because she had committed mistake. However he has denied the suggestion that Ramnath had beaten the prosecutrix.

10. P.W. 9 Dr. (Smt.) N. Rohan Yadav who has examined the prosecutrix has noticed the following injuries :-

(i) Lacerated wound on the left side of chin of size 1.5 cm in length, scab present.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

(ii) Abrasion on anterio-lateral surface of left wrist, 1cm in length, scab present.

(iii) Two linear abrasions 2 to 2.5 cm in length on dorsum of hand.

(iv) Multiple linear abrasion over past surface of right forearm 15 to 20 in number.

(v) Incised wound – 1cm x .3 cm. situated posteriomedial part of lower 1/3 of right forearm.

(vi) A bruise 7 x 2 cm on back of chest crossing midline between both scapula, obliquely placed with black coloured. No semen or blood stains over private part.

On internal examination, she found that Hymen was old torn, vagina admits two fingers easily and there was no injury over her vagina. No definite opinion of rape could be given as the lady is married and habitual of intercourse, but looking to the external injuries, rape is possible in this case. All the injuries have been caused by hard and blunt object whereas injury No. 5 has been caused by some sharp edged weapon and the duration of the injuries have been opined from 24 to 48 hrs. In cross-examination she has stated that with the change of time, the colour of wound changes and when the wound is healed, scab formation take place. This happens between 48 to 72 hrs. Scab formation takes place earlier over superficial wounds whereas in deep wounds, it takes time. The injuries were simple in nature. However, no injuries have been found by the doctor who has

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

examined the accused and he opined that he was capable of performing sexual intercourse.

11. The version of the prosecutrix and other witnesses examined by the prosecution does not inspire confidence. The prosecutrix in para 12 has admitted that her house is adjacent to that of the accused and at the time of incident, father-in-law and mother-in-law of the prosecutrix were present in home. She claims that while she was struggling with the accused, she was weeping and shouting and only after 2-3 minutes after the accused had closed the door, her mother-in-law started thumping the door, whereupon the accused opened the door and fled away. P.W. 2 Chourasiya Bai, mother-in-law has stated that she was standing before her door, on hearing her cries, she reached there and thereafter the accused opened the door and fled. She has further stated in para 6 that when she entered the room, she saw that the prosecutrix had put on petticoat and sari. Thus if the version of the prosecutrix and her mother-in-law are to be believed than it was not practically possible for the accused to complete the act of rape within such a short period that too with a lady who had resisted the attempt tooth and nail. In ***Ashok Kumar –v- State*** (supra), it has been held that where time gap of reaching of the prosecutrix in house of the accused and her brother was only of 1 or 2 minutes, no rape can be committed within such short duration.

12. Though the prosecution has tried to explain the delay in lodging the report on the pretext that prosecutrix out of shame proceeded to the forest to commit suicide but the explanation does not inspire confidence because the incident is of 1.30 P.M. of 21st August, 2005. She has stated that she returned home with her mother-in-law and she was kept in the home by the mother-in-law till 6-7 P.M.

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आदेश पत्रक (पूर्वानुबद्ध)

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Thereafter she somehow managed to escape towards forest from where she was brought by her husband and Jeth in the following morning. P.W. 2 Chaurasia Bai has also stated that she proceeded towards forest for committing suicide at 6 P.M. On return of her son, she narrated about the incident and also informed that she had proceeded towards forest whereupon they went in her search, however, they could bring her only on the next day at about 11 O'clock. She has admitted that both her sons had gone for fishing at a distance of just ½ km. however she did not go to them to inform about the incident fearing that his son shall beat her daughter-in-law. On the contrary, P.W. 3 Ramnath, husband has stated that he returned with Shivnath at 7 P.M. in the evening and found his mother weeping who informed them that Sonu has gone towards forest and he learnt about the incident of rape only on 3rd day when his wife was discovered by them from her. The conduct of P.W. 2 in not informing her sons about the incident immediately when they came in the evening, creates suspicion regarding veracity of the prosecution case. If the version of the prosecutrix and her mother-in-law is accepted, in that case, the prosecutrix had returned from the forest on 22nd morning, however the report was lodged only on 23rd at about 1.30. P.W. 4 Shivnath has admitted that Ramnath has reprimanded his wife in the home as she had committed mistake though he has denied that he beat her in the forest.

13. The learned trial Court relied upon the statement of P.W. 9- the lady doctor who has examined the prosecutrix and has found the injuries described in foregoing paragraph & has held that the presence of injuries over the person of the prosecutrix corroborates the statement of prosecutrix and other witnesses, and has ruled out consent. However from perusal of the statement of lady doctor who has

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आदेश पत्रक (पूर्वानुबद्ध)

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assessed the duration of the injuries from 24 to 48 hrs and also assigned medical reasons for the above assessment in her cross-examination, the defence of the accused appellant appears to be probable that the said injuries might have been inflicted upon her after the incident from beating of the husband as she was medically examined only after 72 hrs. of the incident. The above possibility is further strengthened by the conduct of the prosecutrix and other witnesses and also from unexplained delay in lodging the report.

14. As has already been observed, the appellant and the prosecutrix resided in the adjacent houses. They had gone to Delhi to earn their livelihood and there also, they resided together, and the prosecutrix was initially not inclined to report the matter, in these circumstances, the defence of the appellant that the prosecutrix was beaten by her husband on suspicion of consensual sexual relationship with the appellant, can be probabilised.

15. In the result, the appeal is allowed. Conviction of the appellant under Sections 323 and 376 of I.P.C. and sentence imposed upon him are set aside and the appellant is acquitted of the charges. He be set at liberty forthwith, if not required in any other case.

Sd/-
DHIRENDRA MISHRA
Judge